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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,283	01/13/2004	Satoshi Oshima	500.38928CX1	1630

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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

LOHN, JOSHUA A

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/755,283

Applicant(s)

OSHIMA ET AL.

Examiner

Joshua A. Lohn

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 11, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9, 10, 12, 13, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/13/04, 6/6/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

NON-FINAL REJECTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 6-8, 11, 14, and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-3, 5-7, and 8 of U.S. Patent No. 6,697,972. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 1 of the instant application is rejected over claim 1 of the patent. Claim 1 of the patent includes all of the limitations in claim 1 of the instant application. With regard to the additional limitations in claim 1 of the patent consisting of the limitations relating to the AP fault monitor, which are not included in claim 1 of the instant application, the omission of these limitations in claim 1 of the instant application is an obvious expedient since the remaining

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limitations of claim 1 of the patent perform the same function as the limitations in claim 1 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)). Claim 1 of the patent fails to disclose the loading and executing of the first OS, second OS, and multi-OS controller.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that these loading and executing steps would have been required in the claims of the patent. These steps are necessary in order to have the OS operation that is being monitored in the limitations disclosed in the patent.

Claim 2 of the instant application is rejected over claim 2 of the patent. Claim 2 of the patent explicitly discloses the comparing of the reception interval of said alive message with predetermined time information stored in memory.

Claim 3 of the instant application is rejected over claim 3 of the patent. Claim 3 of the patent explicitly discloses that the restarts of the first OS by the multi-OS controller are in accordance with a restart method stored in the memory. Claim 3 of the patent fails to state that the multi-OS controller is utilized in this operation, and only mentions the fault monitor. However, it is inherent in the operation of the fault monitor that the multi-OS controller is also used, see column 7, lines 49-51 of the patent.

Claim 6 of the instant application is rejected over claim 5 of the patent. Claim 5 of the patent includes all of the limitations in claim 6 of the instant application. With regard to the additional limitations in claim 5 of the patent consisting of the limitations relating to the AP fault monitor, which are not included in claim 6 of the instant application, the omission of these

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limitations in claim 6 of the instant application is an obvious expedient since the remaining limitations of claim 5 of the patent perform the same function as the limitations in claim 6 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

Claim 7 of the instant application is rejected over claim 6 of the patent. Claim 6 of the patent explicitly discloses the comparing of the reception interval of said alive message with predetermined time information stored in memory.

Claim 8 of the instant application is rejected over claim 7 of the patent. Claim 7 of the patent explicitly discloses that the restarts of the first OS by the multi-OS controller are in accordance with a restart method stored in the memory. Claim 7 of the patent fails to state that the multi-OS controller is utilized in this operation, and only mentions the fault monitor. However, it is inherent in the operation of the fault monitor that the multi-OS controller is also used, see column 7, lines 49-51 of the patent.

Claim 11 of the instant application is rejected over claim 8 of the patent. Claim 8 of the patent includes all of the limitations in claim 11 of the instant application. With regard to the additional limitations in claim 8 of the patent consisting of the limitations relating to the AP fault monitor, which are not included in claim 11 of the instant application, the omission of these limitations in claim 11 of the instant application is an obvious expedient since the remaining limitations of claim 8 of the patent perform the same function as the limitations in claim 11 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)). The additional limitation in claim 11 of the instant application involving loading the operating systems and control programs in memory included in the computer are inherent in the utility of a computer program

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product. The program described in claim 8 of the patent, to realize its intended purpose and functionality, would have obviously been loaded into some form of memory for execution in a computer.

Claim 14 of the instant application is rejected over claim 1 of the patent. Claim 1 of the patent includes all of the limitations in claim 14 of the instant application. With regard to the additional limitations in claim 1 of the patent consisting of the limitations relating to the AP fault monitor and further details on the message transmission, and recovery methods, which are not included in claim 14 of the instant application, the omission of these limitations in claim 14 of the instant application is an obvious expedient since the remaining limitations of claim 1 of the patent perform the same function as the limitations in claim 14 of the instant application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)). Claim 1 of the patent fails to disclose the loading of the first OS, second OS, and multi-OS controller. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the loading would have been required in the claims of the patent. The loading of the various aspects is necessary in order to have the OS operation that is being monitored in the limitations disclosed in the patent.

Claim 15 of the instant application is rejected over claim 3 of the patent. Claim 3 of the patent explicitly discloses that the restarts of the first OS by the multi-OS controller are in accordance with a restart method stored in the memory. Claim 3 of the patent fails to state that the multi-OS controller is utilized in this operation, and only mentions the fault monitor. However, it is inherent in the operation of the fault monitor that the multi-OS controller is also used, see column 7, lines 49-51 of the patent.

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Conclusion


Claims 4, 5, 9, 10, 12, 13, 16, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua A. Lohn whose telephone number is (571) 272-3661. The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAL


SCOTT BADERMAN
PRIMARY EXAMINER